

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Mr. Mike Aitken, Owner
Model A Rebuilder
16 Olema-Bolinas Road
Bolinas, California 94924
ID No. CAL 000002371

Respondent.

Docket HWCA 20030312

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The State Department of Toxic Substances Control (Department) and Mr. Mike Aitken, Owner, Model A Rebuilder, (Respondent) enter into this Consent Order and agree as follows:

1.1 Site. Respondent generates hazardous waste at the following site: 16 Olema-Bolinas Road, Bolinas, California 94924 (Site).

1.2 Inspection. The Department inspected the Site on January 30, 2003.

1.3 Generator. The Respondent generates the following hazardous waste:
Used oil and Paint Solvents waste.

1.4 Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of

the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5 Settlement. A dispute exists regarding the alleged violations. The parties wish to avoid the expense of litigation and to ensure prompt compliance. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

1.6 Waiver of Hearing. Respondent waives any right to a hearing in this matter.

1.7 Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

1.8 Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit (A).

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1 The Respondent violated Title 22, California Code of Regulations, Section 66262.34(a) in that on or about January 30, 2003, Model A Rebuilder accumulated waste greater than allowable time limits (storage without a permit).

2.2 The Respondent violated Title 22, California Code of Regulations, Section 66262.34 (e)(I) in that on or about January 30, 2003, Model A Rebuilder

maintained more than one satellite container of paint/solvent at a satellite accumulation area.

2.3 The Respondent violated Title 22, California Code of Regulations, Section 66262.34(e)(I)(B) in that on or about January 30, 2003, Model A Rebuilder had held hazardous waste at a satellite accumulation area greater than one year.

2.4 The Respondent violated Title 22, California Code of Regulations, Section 66262.34(f) in that on or about January 30, 2003, Model A Rebuilder failed to properly label two 55-gallon drums and three 5-gallon containers of hazardous waste.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1 Within 15 days of the effective date of this Order, Respondent shall remove all drums of hazardous waste or apply for a Hazardous Waste Storage Permit.

3.1.2 Within 15 days of the effective date of this Order, Respondent shall remove all hazardous waste at the satellite accumulation which are stored greater than one year.

3.1.3 Within 15 days of the effective date of this Order, Respondent shall remove all hazardous waste containers except for one hazardous waste container at the satellite accumulation area.

3.1.4 Within 15 days of the effective date of this Order, Respondent shall remove all hazardous waste containers at the satellite accumulation area which stored hazardous waste greater than one year.

3.1.5 Within 15 days of the effective date of this Order, Respondent shall properly label all drums and containers of hazardous waste with the proper hazardous waste labels.

3.2 Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Branch Chief
Mr. Stephen Sterling
Department of Toxic Substances Control
8800 California Center Drive
Sacramento, California 95826

Mr. Tim Underwood
Marin County CUPA Program
3501 Civic Center Drive, Room 236
San Rafael, California 94903

3.3 Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4 Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document

as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5 Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6 Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7 Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8 Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry

or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9 Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10 Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11 Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12 Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13 Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1 Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2 Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3 Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4 Time Periods. "Days" for purposes of this Order means calendar days.

PAYMENTS

5. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of ten thousand dollars (\$10,000.00) of which five thousand dollars (\$5,000) is a penalty and five thousand (\$5,000) is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Branch Chief
Mr. Stephen Sterling
Department of Toxic Substances Control
8800 California Center Drive
Sacramento, California 95826

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection

including attorney's fees.

OTHER PROVISIONS

6.1 Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

6.2 Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

6.3 Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

6.4 Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

6.5 Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

6.6 Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water

Resources Control Board or a California regional water quality control board,

Dated: Oct 21, 03

Michael P. Aitken

Mr. Mike Aitken, Owner
Model A Rebuilder
(Respondent)

Dated: October 31, 2003

Rick Robison

Rick Robison
Supervising Hazardous Substances
Scientist
Task Force Support Special
Investigations Branch
Department of Toxic Substances Control